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ral tendency, and to minister to our highest pleasures. If, however, our author should not add one line to what he has already written, his name is sure to be warmly cherished by those to whom his works have been pleasant and profitable companions, with familiar faces ever beaming with benignity and sinlessness ; whose love of moral and intellectual excellence he has kindled or elevated ; and who can pardon an occasional paradox or fallacy, when it springs from a desire to vindicate the intrinsic nobleness of the poet's vocation, and is associated with such high moral principle, and so many valuable and soul-animating truths.

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ART. IV. — *Collections of the Massachusetts Historical Society.* Vol. VIII. of the Third Series. Boston : Charles C. Little and James Brown. 1843. 8vo. pp. 348.

AFTER an interval longer than usual, the Massachusetts Historical Society has made another valuable addition to its rich collections. Our attention has been drawn to the present volume, specially, by a communication contained in it from Mr. F. C. Gray, relating to the early laws of Massachusetts ; of which we shall speak more particularly, after a cursory notice of the matters which precede it.

The first article is a translation of a part of the "History of Ferdinand and Isabella" by Bernaldez ; a work never printed. The part translated is taken from a manuscript copy, belonging to Mr. Prescott, the author of the history of the same royal couple. It is confined to the account of Columbus, which derives its principal interest from the circumstance that he was a favorite guest of the author, who was curate of Los Palacios, a town of Andalusia, in Spain. Bernaldez framed his simple narrative, partly from oral communications derived from personal intercourse with Columbus, and partly from the papers which the great navigator placed in his hands.

This extract is followed by a brief narrative of Bartholomew Gosnold's voyage in 1602, and the consequent attempt to colonize New England. Gabriel Archer's "Relation,"



which appears to be a correct chronological journal, is taken from Purchas's Pilgrims. Brereton's letter to Sir W. Raleigh is printed from a transcript presented to the Massachusetts Historical Society by Mr. Aspinwall, American consul in London ; to which are appended several tracts printed from transcripts procured by Professor Sparks in London.

Gosnold was the first English navigator who made a direct voyage to this continent. He sailed from Falmouth on the 26th of March, 1602, and reached a cape on the 15th of May, near which the crew "took great store of codfish"; and it was consequently named Cape Cod. The first landing of the company was on the most westerly of a group of islands in Buzzard's Bay, which was called, in honor of the Queen, Elizabeth, a name since transferred to the whole cluster.

The description of the spot where Gosnold erected a house and fort, — namely, an islet of about one acre of ground, in a small lake or pond, on the northwesterly side of the island, is so exact as to leave no doubt of the locality. The cellar of the store-house was discovered by Dr. Belknap in 1797 ; and "in the summer of 1817," say the committee of publication of the Historical Society, "several of the members of the Society visited the Elizabeth Islands, and examined the precise spot of Gosnold's settlement. It is perfectly well defined, and is on a small islet in a pond, on an island now known by its Indian name, *Cuttyhunk*."

The company visited the main land opposite the island, which is described by Brereton as a paradise, or a place which might easily be made such ; where all the beauties of a landscape were so grouped, "as if nature would show herself above her power, artificial." But some of the company soon became discontented. There was a charm in the thought of home surpassing the delight of a garden in the wilderness. On the sixteenth day after the landing, says Archer, "began some of our company, that had beforevowed to stay, to make revolt ; whereupon the planters diminishing, all was given over. On the 18th of June, Gosnold, with thirty-two men, being the whole number which accompanied him, returned to England.

In the "tracts appended to Brereton," are some curious speculations concerning the benefits which England might



derive from colonizing the country visited by Gosnold. Among these is a theory, grounded on geographical probabilities, concerning "a convenient passage and trade with the South Sea, under temperate regions, part by rivers, and some part over land in the continent of America"; with ultimate reference to trade with "China, and those passing rich countries, lying in the East parts of the world." After the lapse of nearly two centuries and a half, this speculation, founded on more geographical knowledge, is revived; and still, to most persons, probably, appears idle and visionary.

The next article is entitled "A true Relation of the most prosperous Voyage made by Captain George Weymouth, in the Discovery of the Land of Virginia, where he discovered, sixty miles up, a most excellent River, together with a most fertile Land. Written by James Rosier, a Gentleman employed in the Voyage. Londoni : Impensis Geor. Bishop. 1605."

"In the fourth volume of Purchas's Pilgrims," say the society's committee of publication, "is a chapter containing extracts from this work. The whole is here reprinted from a transcript procured by Professor Sparks." The river discovered by Weymouth was undoubtedly the Penobscot, which, together with the surrounding country, is described by Rosier in the most glowing language. After a month's exploration of the river and the neighbouring coast and country, and the kidnapping of five of the natives, as specimens of the race, the voyagers set sail for England. This was in the middle of June, when the earth, as well in its wild as in its cultivated state, is covered with its rich mantle of green. On the eve of departure, Rosier pours out, from the fulness of his heart, the following valedictory speech.

"For we having now, by the direction of the Omnipotent Disposer of all good intents, (far beyond the period of our hopes,) fallen with so bold a coast, found so excellent and secure harbor, for as many ships as any nation professing Christ is able to set forth to sea; discovered a river, which the all-creating God, with his most liberal hand, hath made above report notable with his foresaid blessings, bordered with a land, whose pleasant fertility bewrayeth itself to be the garden of nature, wherein she only intended to delight herself, having hitherto obscured it to any, except to a purblind generation, whose understanding it hath pleased God to darken, as they can neither discern, use, or



rightly esteem the invaluable riches in midst whereof they live, sensually content with the bark and outward rinds, as neither knowing the sweetness of the inward marrow, nor acknowledging the Deity of the Almighty; having, I say, thus far proceeded, and having some of the inhabitant nation (of best understanding we saw amongst them), who (learning our language) may be able to give us further instruction concerning all the premised particulars, as also of their governors and government, situation of towns, and what else shall be convenient, which by no means otherwise we could by any observation of ourselves learn in a long time; our captain now wholly intended his provision for speedy return." — pp. 152, 153.

Last of these itineraries is "A Voyage into New England begun in 1623, and ended in 1624, Performed by Christopher Levett, his Majesty's Woodward of Somersetshire, and one of the Council of New England. Printed at London by William Jones, 1628." This also is printed from a transcript procured by Professor Sparks in England. The author seems to have been born for a traveller. His buoyant spirit never sunk under the pressure of outward evils. He appears to have been a sincere Christian, as well as a merry one, and his constant forbearance and infinite good nature, secured to him the universal friendship and kind offices of the natives of the wilderness. The first place, he says, that he set his foot upon in New England, was the Isle of Shoals; where he "neither could see one good timber tree, nor so much good ground as to make a garden." He then sailed to the Piscataqua, whence his travels were wholly eastward. He finally took up his abode, for a while, at a place "about two leagues to the east of Cape Elizabeth," which he called York. There he "built a house, and fortified it in a reasonable good fashion," but soon abandoned it.

He concludes with certain directions for those who "intend to go into New England to plant"; among which are the following:

"It is a country where none can live except he either labor himself, or be able to keep others to labor for him.

"If a man have a wife and many small children, not to come there, except for every three loiterers he have one worker; which if he have, he may make a shift to live and not starve.

"If a man have but as many good laborers as loiterers, he shall live much better there than in any place I know.



“ If all be laborers, and no children, then let him not fear, but to do more good there in seven years, than in England in twenty.” — p. 190.

We pass now from this slight notice of the doings of some of the pioneers in the work of colonization, to the provision made by the colonists for mutual protection, after they had secured a permanent abode in New England. The article in the Historical Collections pertaining to this subject, to which we have already adverted, is entitled : “ Remarks on the Early Laws of Massachusetts Bay ; with the Code adopted in 1641, and called THE BODY OF LIBERTIES, now first printed. By F. C. Gray, LL. D.”

The circumstances attending the colonization of New England were peculiarly favorable to the establishment of a wise system of civil polity, and to the enactment of equal and wholesome laws. The first colonists of Plymouth, who were men of a like mould to those of Massachusetts who came after them, had passed through a kind of training which eminently fitted them for self-government ; such as made them feel that civil freedom, and religious freedom too, as they understood it, were every thing that was worth living for. By a favorable course of events, combined with their personal character, they were enabled to assume at once a form of government virtually independent, and they consequently bound themselves, as a civil body politic, to the faithful observance of such laws and ordinances as should be framed. In this there was great wisdom and foresight ; uniting liberty and law in close alliance, and showing that they well understood what William Penn, more than half a century afterwards, well expressed, in proclaiming his government for Pennsylvania ; namely, that “ liberty without obedience is confusion, and obedience without liberty is slavery.”

The political character of the people of New England may be traced, in a great degree, through the period of their colonial history, and in their subsequent organization of their forms of government, to this beginning. The Pilgrims, as we are wont to call them, had, before embarking, extorted from James, not the assurance of unconditional toleration of their religious faith and forms of worship, but a promise that he would abstain from strict scrutiny into their ecclesiastical matters, so long as they conducted themselves quietly. It was not until they had thus gained the royal acquiescence in



conducting what was most dear to them according to their own pleasure, that they would consent to receive a patent from the company in England. Then followed the sacrifices they made in procuring a common fund, sufficient to provide very humble means for embarking for the new world.

Their fitness to become the founders of a new empire is demonstrated by such facts, and, indeed, by the whole history of their preparation for their voyage, and of the energetic measures by which all their purposes were accomplished. Their virtues, like their religion, were of the sternest cast, such as were not only favorable to republicanism, but capable of sustaining a pure democracy. Though they came out of a land whose constitution was made up of precedents, they were wise enough to frame a written civil covenant, which proved a sufficient basis for legislation and the operation of executive authority, while equality was not impaired, and all governed each. A circumstance unforeseen came in aid of the formation of this new republic. The emigrants finding that they were to be landed out of the bounds of the South Virginia company, from which they had received their patent, bethought themselves how they should use their liberty. It is said there were indications that, with some, it would degenerate into licentiousness. Hence the larger and better part saw how dangerous it might prove, should each one do what he listed ; and consequently the compact was executed before the company disembarked.

All power was exercised by the people, either in their primary assemblies, or by delegating it to a governor and assistants chosen annually. The governor and assistants were clothed as well with judicial as with executive authority. A code of laws was not enacted at one time ; and for several years the governor, with a single assistant, probably decided all causes according to the common laws of England, or to his own sense of right and equity. Even trial by jury of criminal cases, trespasses, and debts was not decreed by the " Court," that is, the assembly of the people, until three years after the commencement of the colony. Several years more expired before any laws were enacted, except those concerning prudential affairs ; such as the prohibition of the export of lumber without the consent of the governor and council ; the forbidding of " handicraftsmen to use their



science or trade for any strangers or foreigners, till such time as the necessity of the colony be served"; and the regulations respecting the divisions of lands.

The civil and ecclesiastical affairs of the colony were conducted like those of any voluntary association, forming and executing its own by-laws. Dependence on the crown was indeed acknowledged, though for the most part tacitly; since for many years nothing occurred to produce collision, and since the people were not numerous nor powerful enough to stir the jealousy of the British government, nor rich enough to excite its cupidity. A germ of independence was expanding unnoticed. Had it been perceived, it would have been nipped untimely.

In January, 1630, the company incorporated by King James in 1620, "by the name of the Council established at Plymouth, in the County of Devon, for the planting, ruling, ordering, and governing of New England in America," for certain good and sufficient reasons thereunto moving them, granted to William Bradford, his associates, and assigns, a part of New England which had been given to the corporation by the royal patent. By the same grant, the colony was authorized to make all necessary laws for its own government, not repugnant to the laws of England. Thus were the people by legal deed saved from all exposure to foreign legislation, which had not indeed been hitherto exercised, but to which they might otherwise have become subjected at a future period. Nearly two years before this grant to the Plymouth colony, the same council had sold to a few associates the territory of a part of which Massachusetts consists. Several respectable non-conformists, of considerable wealth, purchased rights of the associates, with the intention of providing a place of refuge for their silenced ministers; and they formed their plans for settlement in the new world, where they might enjoy unmolested their own system of religious worship and discipline. A few persons were sent as pioneers, under the government of John Endicott; a man, says Johnson, in his work entitled "Wonder-working Providence," who was "a fit instrument to begin this wilderness work; of courage bold, undaunted, yet sociable, and of a cheerful spirit, loving or austere, as occasion served." His commission was, to advance the plantation at Naumkeak, (Salem,) which had already been indicated as a favorable



retreat, and, in general, to manage the affairs of the associated grantees.

The company by which these movements were made, was incorporated by letters patent from Charles the First, by the name of "the Governor and Company of the Massachusetts Bay in New England," and John Endicott was appointed Governor.

Among those who proposed to emigrate, besides learned clergymen devoted to their work, were many persons of considerable property, of good education, and of habits of sober reflection; men who were too considerate, and placed too high a value on civil and religious freedom, to subject themselves unwillingly to the changes and caprices of a distant proprietary government. Accordingly, after grave deliberation and thorough debate in council, it was agreed that the government should be transferred to New England, and officers were chosen from among those who purposed to embark with their households to found the new colony.

What the people of the Plymouth colony procured by accident, namely, the undisturbed enjoyment of self-government, the sagacious men who proposed to emigrate to Massachusetts provided for with prudent foresight. Filled with the zeal and constancy of martyrs, they were the very men to found a government on the broad and firm basis of the natural inherent rights of man; to impart to those who followed them, and to transmit to their successors, that unyielding spirit of civil freedom, which was closely allied to their unwavering energy in maintaining their religious liberty. Their success in transferring the government from the English proprietors to the colony was followed by remarkable results, and gave a powerful impulse to emigration. It may be easily conceived with what different feelings emigrants would join a community in which they could choose their own rulers, and become subject to laws made by men immediately accountable to the people, from those which they would have experienced under subjection to a government three thousand miles distant.

Immediately after the government of Massachusetts was fixed on a system so consonant with the wishes of those who projected the settlement of the colony, John Winthrop was chosen governor. He arrived at Massachusetts Bay, with a fleet of twelve ships, containing fifteen hundred persons,



on the 6th of July, 1630. The first Court of Assistants was held at Charlestown, on board the *Arabella*, on the 23d day of the succeeding month. The first General Court was held in Boston, on the 19th of October. It was then and there resolved, that the freemen should choose the assistants ; that the assistants should elect the governor and deputy-governor from their own number, and that they should together constitute one body for making laws and appointing officers to execute them. But, as if they had rashly surrendered a privilege that they ought to keep in their own hands, the freemen, when assembled in General Court early in the next year, voted to resume the right of election, as well of governor and deputy-governor, as of assistants.

Several planters were declared freemen at the first General Court. The whole number, however, does not appear to have exceeded one hundred, though the population amounted to two thousand, including the inhabitants of Salem. There is no evidence that the smallness of the number who were originally admitted to the rights of freemen was occasioned by any severe scrutiny in regard to their admission. The probable fact is, that many were at first unambitious of the distinction, believing that the government was in good hands, and that their rights would be well secured. In the second year, however, an exclusive principle was adopted by a decree of the General Court, which provided that none should be admitted as freemen who were not in full communion with the church. This measure debarred all who were not communicants from the privilege of voting at elections, and serving in the offices of jurors and magistrates. Such a decree, as it may well be supposed, occasioned great discontent among those who had not previously claimed their title to be received as freemen. Voluntary neglect of a privilege the value and importance of which are not immediately perceived and appreciated, is a very different thing from being precluded from its use without one's consent. The same man who, under certain circumstances, might be tempted to sell his liberty for a bare maintenance, would, at the same time, revolt against servitude enforced by physical violence.

Notwithstanding this false limitation of civil rights, the Puritans of Massachusetts were inspired with the same spirit of freedom which pervaded the mass of their brethren whom they left behind them in their native land. It was the Puri-



tans who kept alive the spark of liberty during the reign of the Stuarts. Their sacrifices in behalf of religious and civil liberty continued to be dedicated on the same altar of conscience. They were the sacrifices prompted by the spirit of man which is in him. Doubtless the freemen of Massachusetts valued their peculiar notions of religion and church government in a degree proportioned to the sacrifices they had made for obtaining the full enjoyment of them. Their whole ambition, if it may be so called, was to secure and perpetuate what they had won by their perseverance. All opposition, all diversity, or even indifference to their views of religious matters, seem to have been regarded by them as trials of their strength ; and therefore to be met with precaution, and, if need were, by resistance and even proscription, at the beginning.

Although the increase of the freemen was greatly checked by the arbitrary manner in which they were admitted to that distinction, they soon became too numerous for a legislative body. Indeed, they had intrusted the affairs of the colony, from the beginning, mainly to the governor and assistants. But in the year 1634, the several towns, some of them being more than thirty miles from Boston, deputed by common consent one or more of their most distinguished inhabitants to appear as representatives of the freemen of the General Court to be held at Newtown [Cambridge]. When convened, they passed several resolutions respecting the powers and duties of the General Court ; made choice of magistrates ; established a law for trial by jury ; determined that the freemen should meet annually for making elections of officers of the government, and sending deputies to the General Court to legislate in their behalf. Of the circumstances attending these changes in the affairs of government, we shall speak more particularly in the sequel.

The Government, which had before borne a kind of patriarchal character, now assumed so much the form of a self-constituted republic, as to rouse the jealousy of Charles the First, who commissioned the Archbishop of Canterbury and others with authority to govern the plantations, and “to make laws and constitutions concerning either their state public or the utility of individuals.” With almost inconceivable absurdity, they were empowered to provide for the support of the clergy, by requiring “tithes, oblations,



and other profits according to their discretion ; to inflict punishment on those who should violate their ordinances ; to remove governors of plantations, and to appoint others ; and to constitute tribunals, and courts of justice ecclesiastical and civil, with such authority and form as they should think proper." This mockery, however, was not to have its completion until the laws of the royal commission should be approved by the king and proclaimed in the colonies.

The tyrannical proceedings of his Majesty extended still farther. The commissioners were made a court of inquisition, with authority to take cognizance of criminal charges against a colony, its governor, or persons concerned in the management of its public affairs, and at their discretion to transport the offenders to England for punishment. Even the original charters of the colonies were subjected to captious investigation, and the commissioners were required not only to revoke those which had been unfairly obtained, (a great stretch of discretionary power,) but also to annul such as contained provisions too liberal for the safety of the royal prerogative.

Fortunately, while Massachusetts had been waxing stronger, the power of the crown was on the wane. The instructions to the Lords Commissioners, and the authority with which they were invested, though threatening in appearance, proved impotent in the result. The magistrates of Massachusetts called the clergy of the colony together in a body, who, in answer to the question, "What ought to be done if a general governor should be sent out of England," agreed unanimously, that the Colony ought not to receive him, but to maintain their rights, if able ; "otherwise, to avoid or protract." Sir Ferdinando Gorges was appointed governor-general in 1637, but he never assumed the authority of the office. At the same time, the king forbade by proclamation the emigration of his subjects to the American Colonies, unless with special license, after having taken the oath of allegiance and conformed to the discipline of the English Church. But prelatical power was suffering a rapid decline, and the royal prohibition proved almost nugatory.

In the year last mentioned, on the plea that the Colony of Massachusetts had violated its charter, a *quo warranto* was issued, and judgment given, that the liberties of the Colony should be seized by the king. The judgment was not serv-



ed by legal process ; but the governor and company of Massachusetts were ordered by the privy council to surrender their patent. The government of the Colony, having found by past experience, that prompt compliances with royal mandates were not always expedient, and that benefit sometimes followed delay, instead of sending back their charter, directed a petition to the Commissioners, couched indeed in humble language, but manifesting a readiness to make their defence.\*

The attempts of Charles to deprive Massachusetts of privileges so precious, and to establish despotic rule in New England, died out amidst the troubles which absorbed his thoughts at home. Meanwhile, the New-England colonies were extending and increasing in population. Freed for a time from royal interference, after the abortive attempts to deprive Massachusetts of her charter, they were left for a while to the undisturbed management of their own affairs. It was a fortunate season of repose from the oppressive designs of the crown, for serious apprehensions were soon afterwards entertained, by the inhabitants of Connecticut and New Haven, of hostilities from the Dutch and from their Indian neighbours. Their well-grounded fears excited the sympathy of Plymouth and Massachusetts, and on the 19th of May, 1643, Plymouth, Massachusetts, New Haven, and Connecticut formed a permanent confederacy for common succour and defence, under the name of THE UNITED COLONIES OF NEW ENGLAND ; a confederacy wisely conceived and wisely timed. It was a type of similar combinations which followed, and which terminated in the revolutionary government and confederacy of the United States.†

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\* " We dare not," said the petitioners, " question your Lordships' proceedings in requiring our patent to be sent unto you ; we only desire to open our griefs ; and if in any thing we have offended his Majesty or your Lordships, we humbly prostrate ourselves at the foot of supreme authority. We are sincerely ready to yield all due obedience to both ; we are not conscious that we have offended in any thing, as our government is according to law ; we pray that we may be heard before condemnation, and that we may be suffered to live in the wilderness " More than forty years afterwards, when the agents of the Colony in England expressed their convictions, in despatches to the General Court, that no favor could be expected from the crown unless the charter should be subjected to such modifications as should satisfy the king ; the Court resolved, that " it was better to die by the hand of others, than by their own."

† The celebration, on the 29th of May last, (allowing for the difference of old and new style,) of the two hundredth anniversary of this event, by the



There seems to have been no haste in establishing a code of laws in the Massachusetts Colony. The charter provided, that the government should be administered by a governor, a deputy-governor, and eighteen assistants chosen from the freemen ; and that four general assemblies should be held every year, including the freemen ; at one of which assemblies, the governor and other officers should be chosen. The General Assembly was also empowered to make laws and ordinances, (not contrary or repugnant to the laws of England,) for the welfare of the Colony. Though for a time there was a general acquiescence in the administration of affairs by the Governor and assistants, yet jealousy of their discretion occasionally manifested itself, and the people became impatient for a body of laws.

The first manifestation of discontent mentioned by Mr. Gray, is that of the people of Watertown, (1632,) who, being assessed in the sum of eight pounds by the Court of Assistants, were told by their Pastor and Elder, "that it was not safe to pay moneys after that sort, for fear of bringing themselves and posterity into bondage." The Court summoned the Pastor and Elder to appear, and endeavoured to persuade them that the Assistants were the representatives of the freemen. If they were not convinced, they were so far satisfied as to submit. But in consequence, probably, of this transaction, "two deputies were chosen to attend from each town at the next Court, in May of the same year, and 'advise with

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Historical Society of Massachusetts, was appropriate to the character of the Society, and was conducted in a manner at once dignified and unostentatious, and becoming the institution and the occasion. The selection of the orator, too, was just what was due to him, to the Society, and to the public. John Quincy Adams, a New England man with principles corresponding to the place of his birth, who, with his accustomed eloquence, addressed the Society and the assembly, thoroughly impersonated the feelings and opinions of New-Englandmen ; and never was an orator more continuously responded to by the sympathy of his auditors. The orator, venerable for age and prolonged public services in various gradations of honorable distinction, of which he reached the highest, and still laboring for the interest and honor of the whole people, while he represents a part, without naming his father, reminded us of the union of the States in 1774, under the Federal Congress, when John Adams, some years below the middle age of man, inspired that body with ardor by his bold eloquence and fearless defence of the rights of the people, and contributed so largely to the conversion of the colonies into an independent republic. What a crowd of recollections of the eventful period of little more than two generations that have since intervened, fill the mind ! The oration of Mr. Adams before the Historical Society has since been published.



the Governor and Assistants about the raising of a public stock, so as what they should agree upon should bind all.' ”

This was a modest approach towards claiming the rights which pertained to the freemen. Two years afterwards, they chose from the eight several towns of the Colony two persons to meet and ascertain the powers of the freemen or their deputies, and “ to consider of such matters as they were to take order in at the General Court.” Being satisfied after they met, that all laws should proceed from the General Court, according to the provisions of the charter, they advised with the Governor on the subject, who discouraged the interference of the freemen in such matters, because they were not only too numerous to legislate in a body, but they could not select a sufficient number of deputies who were competent to such matters, or whose time could be spared by the company. He accordingly suggested, that a certain number should be chosen annually, by order of the General Court, to revise the laws, and to refer all grievances to the Court of Assistants ; and that no assessment or disposition of lands should be valid without their consent.

This deputation seems to have been a movement preliminary to that of assuming the power claimed by the freemen ; for each of the towns was represented by three deputies at the General Court in May, and the question of the rights and duties of that body was promptly met by a declaratory act, that the General Court had the exclusive authority to make laws, to appoint and remove officers, to raise money and taxes, and dispose of lands. To place the representative system on a firm basis, it was further ordered, that the freemen of each town might hereafter choose two or three deputies to the General Court, clothed with all the power belonging to their electors, excepting that of the choice of magistrates and other officers. Thus adverse was the opinion of the freemen to that of the Governor, in regard to their competency for legislation. The issue on this point was final. But still another question came up, which occasioned a temporary embarrassment.

The representatives of the towns assembled in the same apartment with the Governor and Assistants, and the deliberations of the General Court were there held in common. In their enactments and in their decisions upon various meas-



ures, there does not appear to have been a uniform mode of procedure. At a General Court held the year after the freemen intrusted their power to deputies (1635), in acting on the application of Mr. Hooker and others of Newtown [Cambridge] for leave to remove to Connecticut, a majority of the representatives were in favor of granting the request ; but the Assistants dissented. The representatives claimed, as the more numerous body, the right to decide the question, since those in favor of the removal formed a majority of the General Court collectively. The business came to a stand. A day of humiliation and prayer was observed, the opinion of the clergy was sought, and, in conformity to it, the representatives yielded to the Assistants. Afterwards, it may be supposed, that, though the Governor and Assistants claimed a negative on the proceedings of the representatives, there was not uniformly a separate action on the laws and ordinances that were passed.

The inconvenience of two bodies meeting together, while, it appears, they felt authorized to act separately, must often have been experienced ; but it was endured for ten years. At the meeting of the General Court in 1644, at the instance of the representatives, it was ordered, that the two bodies should sit in different rooms, and that the several acts of each should be sent to the other for concurrence. In their judicial proceedings, as a supreme court of appeal, if the two branches differed, the vote was to be taken jointly.

From the time that the organization of the government was changed by the choice of deputies to the General Court, instead of the attendance of such freemen as before appeared of their own accord, there was a constantly increasing impatience on the part of the people for the establishment of a body of laws. Their dissatisfaction with the existing state of things was grounded on the danger of giving so much discretion as was necessary to the magistrates, to be exercised with imperfect limitations by specific statutes. In proportion as the magistrates showed either indifference or reluctance in regard to the gratification of the wishes of the freemen, the people became importunate. The slow gradations by which the end so long contended for was accomplished, form a curious portion of the colonial history. We have room only for a very condensed account, drawn from Mr. Gray's extracts from the Colony records, and from Governor Winthrop's Journal.



In 1635, it was agreed in General Court, that persons should be appointed "to frame a body of grounds of laws, which, being allowed by some of the ministers and the General Court, should be received for fundamental laws." But nothing appears to have been done by the magistrates to whom the business was committed. In May, 1636, a large number, including three clergymen, was chosen for the same purpose, and "entreated to make a draught of laws agreeable to the word of God." Such instruction seemed to give the clergymen a prominence in the commission, and Mr. Cotton, being placed foremost in the work, at the session of the Court in the following September, "presented a copy of Moses his Judicials, compiled in exact method," which was referred to the next General Court. Like the similar process of the same body at the present day, this appears to have been adopted as a gentle method of putting to sleep what the legislature did not like to meddle with ; for it was not until a year and a half after Cotton's copy of "Moses his Judicials" was presented, that the subject was revived. The goal was kept in view, but a new starting-place was chosen, and those were placed foremost in the race, who were most zealous to obtain the prize. It was ordered by the Court, in March, 1638, that the freemen of every town, or such of their number as should be deputed for the purpose, should assemble and "collect the heads of such necessary and fundamental laws as may be suitable to the times and places where God in his providence hath cast us," and deliver them to the Governor before the fifth day of June, for the use of the magistrates and clergymen composing the committee for preparing a code of laws to be reported to the General Court the following autumn.

There is no evidence that the freemen, impatient and importunate as they were, gave any heed to the order of the General Court. They had become faithless, it may be, in the disposition of the magistrates and clergy to comply with their wishes ; and not without reason ; for Governor Winthrop, in his Journal (1639), implies, by a cool negation, that they were reluctant to proceed in the work. "Most of the magistrates and some of the elders were not forward in the matter." He gives his reasons for this, in which there is no want of carnal wisdom mingled with nice, sententious casuistry. One of the reasons, he says, "was want of suffi-



cient experience of the nature and disposition of the people, considered with the condition of the country and other circumstances, which made them conceive that such laws would be fittest for us which should arise, *pro re natâ*, upon occasions, &c., and so the laws of England and other States grew, and therefore the fundamental laws of England are called customs, *consuetudines*. 2. For that it would professedly transgress the limits of our charter, which provide we shall make no laws repugnant to the laws of England, and that we were assured we must do. But to raise up laws by practice and custom had been no transgression ; as in our church discipline, and in matters of marriage, to make a law that marriage shall not be solemnized by ministers, is repugnant to the laws of England ; but to bring it to a custom by practice for the magistrates to perform it, is no law made repugnant, &c.”

At length, in 1639, “the two models,” namely, “Moses his Judicials,” which had been drawn up by Cotton, who was on the committee of 1636, and a body of laws written and arranged by Nathaniel Ward, of the committee of 1638, were, with some modifications, sent to the towns by the committee, “to be considered first by the magistrates and elders, and then to be published by the constables to all the people,” that any suggestions might be made concerning them to the deputies to be sent to the next General Court. This looked something like progress in the work ; but when the Court met in November, instead of acting directly on the reports, a committee was appointed, still larger than any preceding, and composed wholly of laymen, with directions to “peruse all those models which have been or shall be further presented to this Court or themselves concerning a form of government and laws to be established, and draw them in one body, altering, adding, or omitting what they shall think fit, and take order that the same shall be copied out and sent to the several towns, that the elders of the churches and freemen may consider of them against the next General Court.”

Enough of caution had certainly been manifested ; but as if patience were not yet exhausted, the General Court “in the third month [May], 1640,” ordered, that, “Whereas a Breviate of Laws was formerly sent forth to be considered by the elders of the churches and other people of this Com-



monwealth, it is now desired, that they will endeavour to ripen their thoughts and counsels about the same by the General Court, in the next, 8th, month."

Never were plans for delay more skilfully conducted. The magistrates knew that the people were impatient, and they knew also how to allay any feverish excitement by administering timely emollients. Their constant appeals to the wishes of the freemen, and calls upon them for counsel, were a flattering unction, which, when the freemen applied it to themselves, could not fail to mitigate their restlessness, even if they were a little suspicious of the design with which it was offered.

At the session of the General Court in October, 1641, Mr. Ward was applied to for a copy of the Liberties and the capital Laws, and it was ordered that nineteen copies should be transcribed. It is remarkable, that the Colony records for the remainder of this year, which was so important an era in the civil affairs of the Colony, are lost. But we learn from "Winthrop's Journal," that the session of the Court in December continued three weeks, and that "one hundred Laws, which were called 'The Body of Liberties,' were established." They had been composed by Mr. Nathaniel Ward, the author of "The Cobler of Agawam"; (sometime pastor of the church of Ipswich, he had been a minister in England, and formerly a student and practiser in the courts of the common law;) "and had been revised and altered by the Court, and sent forth into every town to be further considered of, and now again in this Court they were revised, amended, and presented, and so established for three years; by that experience to have them fully amended, and established to be perpetual."

This code was the basis of the statute laws of the Colony. In the third year after its adoption, measures were taken for a revision of "The Body of Liberties." But as the birth of this body was long anxiously waited for, so in its growth and progress to maturity it was destined equally to disappoint expectation. It was not until 1648, that the laws were so amended, enlarged, and arranged, as to be committed to the press; and ten years afterwards provision was made for a new digest, which, having been prepared, was printed, and copies were distributed among the towns in proportion to their taxes.



It is among the strange caprices of historical tradition, that so little knowledge concerning "The Body of Liberties" established in 1641 should have been transmitted to us ; that a matter, which agitated the whole Colony of Massachusetts for several preceding years, should afterwards have been surrounded with clouds and darkness for two centuries. Hutchinson, and those who have since spoken of the laws adopted in 1641, have left the matter involved in the mists of error, now ascribing the code to Cotton, and again to Ward, and contending in the dark about a shadow. This shadow was the "Abstract," prepared by Cotton in 1636, afterwards presented to the General Court, treated respectfully, remaining nominally *sub judice* until 1641, when it vanished, and "The Body of Liberties," composed by Nathaniel Ward, was adopted.

The "Abstract" of Cotton was first printed in London in 1641, and this impression was entitled "An abstract of the Laws of New England as they are now established." It was reprinted in the fifth volume of "The Collections of the Historical Society." We have recurred to it, and find that it has no resemblance to a body of laws and liberties enacted by a legislative assembly. It contains rather moral and pious suggestions, intended to produce a healthful condition of the social state, than specific laws which man's wisdom devises for the protection of the people in their rights as citizens of a commonwealth.

Mr. Gray has dispelled at once the darkness which hung over this subject. He began his researches with the conviction *a priori* that the "Abstract was not the code established in 1641." We subjoin the following extract, containing an interesting account of his discovery of a copy of the "Liberties," and his conclusive reasoning upon facts, showing that it contains the code established in the year above mentioned.

"It so chanced, that one day, more than twenty years ago, I took up from a corner in the old Athenæum, a folio volume containing the Colony Laws, as published in 1672 ; an edition not of any great rarity. But bound up with it was a manuscript of about sixty pages in the handwriting of that day, which is not easily read. This volume appeared to have belonged to Elisha Hutchinson, who was the grandfather of Governor Hutchinson, and who died in 1717, at the age of seventy-seven. On examining the manuscript



carefully, I found it to contain a copy of the Colonial Charter of 1629, with ten other valuable documents relating to our early history, one of which was 'A Coppie of the Liberties of the Massachusetts Colony in New England.'

"Its genuineness was soon placed beyond question. All the documents accompanying it are undoubtedly genuine, and may now be found printed, with one exception, at full length, in our collections of public documents. It is divided into one hundred distinct articles, separated from each other by strong black lines; and although the introductory and concluding paragraphs are not numbered as laws, so that the highest number is ninety-eight, whereas Winthrop says The Body of Liberties contained a hundred laws, yet this is but an instance of that substantial agreement with circumstantial variation, which is one of the strongest evidences of truth. On comparing these numbers with the citations from the Liberties made in support of the fundamental laws by the General Court in 1646, it was found that they agreed, and that the articles in this manuscript are numbered in the same manner as the official copy then used by them. These Liberties too are, almost without exception, incorporated, and often in the same words, into the printed Laws of the Colony, which are entitled 'Laws and Liberties.' Three complete editions of these were published by authority, namely, in 1649, in 1660, and in 1672. In these, the laws were not inserted in the order of their dates, as in modern times; but all existing provisions of law were consolidated, and classed under appropriate titles arranged in alphabetical order. So that the complete codification of the Statute Law is no new thing under the sun, but was practised by the Colonists of Massachusetts from the beginning. In this manuscript, we find in the margin, opposite most of the Liberties, the number of a page and sometimes of a section. These are references to the page and section of the edition of 1672, where the same provision may be found.

"This then is, beyond all doubt, 'The Body of Liberties' composed by Nathaniel Ward of Ipswich, author of the Simple Cobbler of Agawam, and adopted by the Colony of Massachusetts in 1641; the first Code of Laws established in New England." — pp. 195, 196.

We should be pleased, if we had not extended our remarks to so great a length, to cite some examples produced by Mr. Gray, in which he compares the "Liberties" with the "Abstract." But it is sufficient to remark, that he has vindicated the characters of the fathers of New England from the reproaches cast upon them, of weakness and illiberality in



their legislative acts, by making them speak for themselves in the very letter, after a silence of two centuries.

The volume of the Collections closes with "Gleanings for New England History," by James Savage, LL. D. These gleanings consist of what was gathered by Mr. Savage last summer, during a visit to England, in "searching for materials to illustrate our early Annals." First of these is the will of Isaac Johnson, husband of the lady Arabella, in which John Hampden, John Winthrop, and Thomas Dudley are appointed executors, and a bequest is made to the Governor and company of Massachusetts for the benefit of their plantations.

The records of Cambridge and Oxford Universities were examined by Mr. Savage, (the latter for only two days,) for the names of distinguished men who were graduated there, and who emigrated hither in the early days of the Colony. In this examination, and also in that made at the "Augmentation Office," for the names of persons permitted to embark for the American colonies in 1634-5, he had good success. It appears from the record of emigrants, whose departure was then subject to the control of the Commissioners of Plantations, at the head of which was the archbishop of Canterbury, how unavailing was the paltry attempt to prevent the emigration of puritan ministers, who, as we know, secured their passages, but, as it appears, were not entered on the lists.

Mr. Savage has taken a few gleanings from manuscripts in the British Museum, and copied the titles of some of the rare tracts having a local interest for New-Englandmen. "A mine of unexhausted information about our country," he says, "is contained in the volumes, printed and manuscript, at the British Museum, and in the exploration of the latter my little success should not discourage more hardy or patient adventurers." Doubtless some laborious and skilful miner, like our author, will put his hands to the work and meet with gems, which, if they shall not enrich himself, will add much to the common treasury of the republic of letters.

Lastly, Mr. Savage has given extracts from records pertaining to the families and family alliances of our early settlers, obtained from parish registers, and also "gatherings at her Majesty's State Paper Office from Vol. 11, of papers relating to trade and plantations."



We take leave of this volume of the "Collections of the Massachusetts Historical Society," with gratitude for the new contribution of materials for our annals, and with raised expectations of the increasing utility of the institution.

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ART. V. — *Histoire de L'Art Moderne en Allemagne* ; par le Comte ATHANASE RACZYNSKI. 4to. Tome Second ; pp. 677 : Tome Troisième ; pp. 582.

In a former number of this Journal, we called our readers' attention to the splendid work of Raczynski on German art. We confined ourselves in that paper to the materials furnished by the first and part of the second volume, and to the discussion of a few topics connected with art, having an incidental relation to the work we were reviewing. Following out the plan which we intended at first to have completed in a single article, we shall, in the present paper, give a brief and plain account of the copious and interesting contents of the remainder of the work.

We perceive by the recent journals and newspapers, both from England and the Continent of Europe, that the arts in Germany are advancing with unabated activity. The king of Bavaria has lately "inaugurated" the *Walhalla* with imposing pomp and ceremony. The extraordinary phenomena of new and original schools of art springing up in Germany, founded on principles of the widest application, and supported by the most elaborate studies and the most wonderful learning, have drawn the attention of England, and seem likely to exercise no little influence on the future cultivation of the Fine Arts in that country. Cornelius, the greatest name in one department at least of German art, has been summoned to England to lend the aid of his genius and experience to the formation of a plan for adorning the new Parliament House with national works of art in a style that shall do honor to the genius and munificent spirit of the country. The details of this great artist's views and opinions have been given in the London journals, and are full of interest and instruction, like every thing that comes from this illustrious man. The fact itself is one of